

ESTTA Tracking number: **ESTTA184966**

Filing date: **01/07/2008**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92048654
Party	Defendant TOB International Marketing Corp.
Correspondence Address	TOB International Marketing Corp. 419 Broome Street New York, NY 10013 UNITED STATES
Submission	Answer and Counterclaim
Filer's Name	Jason D. Sanders
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Signature	/jason sanders/
Date	01/07/2008
Attachments	Answer and Counterclaims.PDF (6 pages)(30205 bytes)

Registration Subject to Cancellation

Registration No	2892400	Registration date	10/12/2004
Registrant	Waterford Wedgwood Plc Kilbarry Waterford, IRELAND		
Goods/Services Subject to Cancellation	Class 021. First Use: 1997/04/00 , First Use In Commerce: 1997/04/00 Goods/Services:		

Cancellation No. 92048654

5. Denies that Petitioner owns any valid rights in the mark VINTAGE, and admits that Petitioner's registration for VINTAGE issued on October 12, 2004.

6. Upon information and belief, denies the allegations in paragraph 6 of the Petition for Cancellation.

7. Denies the allegations in paragraph 7 of the Petition for Cancellation.

8. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 8 of the Petition for Cancellation.

9. Denies the allegations in paragraph 9 of the Petition for Cancellation.

10. Denies the allegations in paragraph 10 of the Petition for Cancellation.

11. Denies the allegations in paragraph 11 of the Petition for Cancellation.

12. Denies the allegations in paragraph 12 of the Petition for Cancellation.

AFFIRMATIVE DEFENSES

13. The Petition for Cancellation fails to state a claim upon which relief may be granted.

14. As stated more fully in the Counterclaims, Petitioners do not have trademark rights in the term VINTAGE, which is a generic or merely descriptive term without secondary meaning, with regard to classic or retro designs and styles.

COUNTERCLAIMS

Pursuant to Rule 13 of the Federal Rules of Civil Procedure and Trademark Rule 114(b)(2), Registrant/Counterclaimant TOB International Marketing Corp. ("TOB"), by its attorneys, alleges as follows:

1. Registrant/Counterclaimant TOB is a New York corporation with a principal place of business at 419 Broome Street, New York, NY 10013.

2. Upon information and belief, Petitioner/Counterclaim Respondent Waterford Wedgwood PLC (“Waterford”) is an Irish company with a place of business in Waterford, Ireland.

3. TOB is the owner of federal registrations on the Supplemental Register for the mark VINTAGE MODERN, Registration No. 3,231,740, for “clocks” in Class 14; and VINTAGE MODERN, Registration No. 3,292,390, for “lighting fixtures, namely, lamps,” in Class 11; “furniture, namely, chairs, tables, cabinets, desks, stools, chests, benches, mirrors, picture frames, decorative pillows and mattress cushions, decorative cushions, curtain rods, poles, hooks and finials, curtain rings, window blinds, window shades” in Class 20; “dinnerware; plates, pitchers, bowls, teapots not of precious metal, cups, mugs, salt and pepper shakers, platters, ice buckets, casseroles, cannister sets, cake plates, stemware, glasses, candle sticks and candle holders, not of precious metal, bathroom accessories, namely, soap dishes, liquid soap dispensers, cup holders, toothbrush holders, pails, facial tissue holders” in Class 21; “bed and bath linens; drapery; table linens and kitchen linens; curtains; draperies and fabric window treatments; tapestries and fabric wall hangings” in Class 24; and “rugs and carpets,” in Class 27.

4. Waterford filed a Petition to Cancel TOB’s VINTAGE MODERN registrations, alleging a likelihood of confusion based on alleged trademark rights in the term VINTAGE.

5. Upon information and belief, Waterford is the record owner of Registration No. 2,892,400, for VINTAGE for “articles of glassware for domestic use, namely, stemware, tumblers, iced tea glasses, high ball glasses, goblets, tumblers, champagne glasses, liqueur glasses, brandy glasses, wine glasses, sherbet glasses, shot glasses, carafes, ice buckets, decanters, vases, pitchers, bowls, candle holders not of precious metal, candle sticks not of precious metal, finger bowls, salad bowls, cake stands, salad serving spoons and forks, cocktail

shakers, serving trays not of precious metal, perfume bottles and atomizers sold empty, corkscrews, bottle openers, ice buckets, wine coolers, glass stoppers, and cut crystal glassware” in Class 21 (“Waterford’s Goods”).

6. Since prior to April, 1997, Waterford’s claimed first use date for the term “VINTAGE,” the term “Vintage” has meant of an old or classic style in connection with Waterford’s Goods and related goods, and the term continues to have this meaning as of today.

7. Upon information and belief, third parties have used and are using the term “Vintage” in connection with Waterford’s Goods and related goods.

8. The term “Vintage” in connection with Waterford’s Goods is generic.

9. The term “Vintage” as it appears in Registration No. 2,892,400 is merely descriptive of Waterford’s Goods, and, upon information and belief, Waterford has not had substantially exclusive use of the terms to qualify for secondary meaning.

10. Upon information and belief, Waterford has failed adequately to police, monitor, control and/or regulate use of the term “Vintage” by unrelated third parties and thus has abandoned any rights that it might have in those terms.

11. TOB will be damaged by continued registration by Waterford of “VINTAGE” and by registrations in which the term “Vintage” is not disclaimed, as evidenced by the cancellation proceeding brought by Waterford against TOB’s registration of VINTAGE MODERN.

12. Accordingly, for all the foregoing reasons, the federal registration for VINTAGE, Registration No. 2,892,400 should be cancelled.

WHEREFORE, Registrant/Counterclaimant requests that the cancellation be dismissed and that the counterclaims be sustained.

Dated: New York, New York
January 7, 2008

Respectfully Submitted,
COWAN, LIEBOWITZ & LATMAN, P.C.
Attorneys for Respondent and Counterclaimant

By: /Baila C. Celedonia/
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing Answer and Counterclaims were served on Petitioners and Counterclaim Respondent by mailing a copy, first class postage prepaid, to their counsel Bassam N. Ibrahim, Buchanan Ingersoll & Rooney P.C., P.O. Box 1404, Alexandria, VA 22313-1404 on January 7, 2008.

_____/Baila C. Celedonia/
Baila C. Celedonia